

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

No. 4:14CR00121-01 KGB

NATHANIEL SMITH IV, a/k/a
Traffick,
Defendant.

Thursday, August 27, 2015
Little Rock, Arkansas
10:16 a.m.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE KRISTINE G. BAKER,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

MS. KRISTIN HUNTINGTON BRYANT, Assistant United States Attorney
United States Attorney's Office
Eastern District of Arkansas
425 West Capitol Avenue, Suite 500
Post Office Box 1229
Little Rock, Arkansas 72203-1229

On Behalf of the Defendant:

MS. KIM DRIGGERS, Assistant Federal Public Defender
Federal Public Defender's Office
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Proceedings reported by machine stenography and displayed
in realtime; transcript prepared utilizing computer-aided
transcription.

1 (Proceeding at 10:16 a.m., defendant present, as follows:)

2 THE COURT: Good morning. We are here this morning
3 for sentencing in the case of the United States of America v.
4 Nathaniel Smith IV. It is Case No. 4:14CR121-1.

5 The defendant, Mr. Smith, is present in court with his
6 attorney, Kim Driggers, and the government is represented today
7 by Assistant United States Attorney Kristin Bryant.

8 Please introduce the gentleman with you.

9 MS. BRYANT: Your Honor, I have Little Rock Police
10 Detective Chris Ringgold.

11 THE COURT: Thank you. Are the parties ready to
12 proceed? Ms. Driggers?

13 MS. DRIGGERS: Yes, your Honor.

14 THE COURT: Ms. Bryant?

15 MS. BRYANT: Yes, your Honor.

16 THE COURT: Has the government provided reasonable
17 notice to any victims?

18 MS. BRYANT: Yes, your Honor. We have attempted to.

19 THE COURT: If you would, Mr. Smith, please approach
20 the podium.

21 Mr. Smith, if you would, please raise your right hand.
22 Ms. Washington is going to administer the oath.

23 (Defendant sworn in.)

24 THE COURT: Mr. Smith, you are under oath. If you
25 answer any of my questions today falsely, your answer may later

1 be used against you in another prosecution for perjury or making
2 a false statement.

3 Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Are you under the influence of any
6 medication, drugs, alcohol, or anything else that would impair
7 your ability to understand the proceeding today, Mr. Smith?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Mr. Smith, I'm going to go through the
10 background of this case first. Initially you were charged in a
11 four-count indictment. Counts 1 and 2 charged you with sex
12 trafficking by force, fraud, or coercion, a violation of 18
13 U.S.C. 1591(a)(1). The offense in Count 1 occurred from in or
14 about January 2014 to on or about April 29, 2014. The offense
15 in Count 2 occurred from in or about October 2013 to on or about
16 October [sic] 29, 2014. Count 3 charged you with transportation
17 of an individual with intent to engage in prostitution, in
18 violation of 18 U.S.C. 2421. That offense occurred between on
19 or about January 2014 through in or about February 2014. Count
20 4 charged you with felon in possession of a firearm, a violation
21 of 18 U.S.C. 922(g)(1). That offense occurred on or about May
22 15 of 2014.

23 On August 6 of 2014, a superseding indictment was filed
24 which added Marjorie Lee, also known as Candy, also known as Mar
25 Mar, as a defendant, in Counts 1, 3, and 4. Count 1 and Count 3

1 were changed to conspiracy to commit sex trafficking by force,
2 fraud, or coercion, in violation of 18 U.S.C. 1594(c). Count 4
3 was changed to aiding and abetting sex trafficking by force,
4 fraud, or coercion, in violation of 18 U.S.C. 1591(a) and (2).
5 Count 5 was added which charged you, Mr. Smith, with sex
6 trafficking by force, fraud, or coercion, in violation of 18
7 U.S.C. 1591(a). The offenses in Counts 3 through 5 occurred
8 from in or about October 2013 to on or about April 29, 2014.
9 Count 6 was added which charged you, Mr. Smith, with
10 transportation of an individual with intent to engage in
11 prosecution, in violation of 18 U.S.C. 2421. That offense
12 occurred between in or about January 2014 through in or about
13 February 2014. Count 7 also was added, which charged you,
14 Mr. Smith, with felon in possession of a firearm, violation of
15 18 U.S.C. 922(g)(1). That offense occurred on or about May 15
16 of 2014.

17 On December 19 of 2014, you appeared with counsel and
18 pursuant to a written plea agreement and Rule 11(c)(1)(C), you
19 proposed pleading guilty to Count 6 of the superseding
20 indictment.

21 In what is the proposed plea agreement -- and I say
22 proposed both in regard to your plea and in regard to the plea
23 agreement because, as we discussed the last time we were here,
24 Rule 11(c)(1)(C), I didn't accept your plea at the last hearing.
25 If I accept a Rule 11(c)(1)(C) plea, I agree that I will

1 sentence you in accord with what you and the government have
2 agreed to in the proposed plea agreement. Right? So I make
3 that decision today. I haven't said that yet on the record.
4 I've given it a lot of thought, but I want to talk with you a
5 little more about it today. But the proposed plea agreement
6 that you presented to me at the last hearing, the government
7 agrees to a recommended sentence of 120 months, or ten years'
8 incarceration; a base offense level of 14, which Mr. Smith
9 understands establishes an offense level which is likely below
10 120 months. That's what's stated in the written plea agreement.
11 However, it was stated in the written plea agreement that you
12 make the agreement in exchange for the dismissal of the sex-
13 trafficking counts, which carry 15-year mandatory minimums. A
14 four-level enhancement as the offense involved fraud or
15 coercion. And eligibility for a two-level reduction for
16 acceptance of responsibility, unless you take any action
17 inconsistent with acceptance.

18 You and the government agreed in the proposed plea
19 agreement that the Assistant United States Attorney would make a
20 determination today regarding your eligibility for a three-level
21 reduction for acceptance. You agreed in the proposed plea
22 agreement to waive all challenges to searches, seizures,
23 arrests, and statements in the investigation by any entity in
24 any forum, and you agreed to assist with the relinquishment of
25 all seized assets where forfeiture may be sought. The parties

1 agreed that no other enhancements would apply under Section 2 or
2 Chapter 3 of the guidelines. If the Court accepts the plea
3 agreement, as I said, the recommendation binds the Court. So,
4 in other words, if I accept the guilty plea, I'm bound to
5 sentence you to the amount of time that is in the proposed plea
6 agreement. If I don't think that's appropriate, then I can
7 reject the guilty plea and I can let you withdraw it and we
8 would go to trial on the counts -- all of the counts on which
9 you're charged.

10 In regard to the proposed plea agreement, as a condition of
11 supervised release, if the proposed plea agreement is accepted
12 and you're sentenced in accord with it, I may require that the
13 probation office provide state officials with all information
14 required under any sexual predator and sexual offender
15 notification and registration statutes, and I may direct you,
16 Mr. Smith, to report to these agencies personally for required
17 additional processing, such as an interview, assessment,
18 fingerprinting, polygraph testing, and DNA collection.

19 Mr. Smith, before we take up those issues, I'm going to ask
20 a few questions. First is, are you satisfied with the work that
21 has been done with you in this case by Ms. Driggers as your
22 lawyer?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Are you satisfied with her work in all
25 respects? If you're not, now is the time to tell me.

1 THE DEFENDANT: Your Honor, I don't feel like -- I was
2 given an adequate amount of defense, but -- I was given a good
3 defense as far as the plea goes. But it was never my intention
4 to go to trial.

5 THE COURT: All right. I'm not certain that I
6 understand that, Mr. Smith, and I want to ask some questions
7 about this plea agreement because for me to accept the plea
8 agreement, I want to satisfy myself that you understand it and
9 that this is what you want to do today. What I hear you saying
10 is that Ms. Driggers has talked to you about it. Right?

11 THE DEFENDANT: Yes, ma'am. Yes.

12 THE COURT: In regard to the plea agreement, it's very
13 clear from the plea agreement that the count to which you're
14 getting ready to plead guilty has a guideline recommended
15 sentence that's less by half of what the 11(c)(1)(C) plea is
16 proposing to me. Right?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: But it's also clear that the counts that
19 are being dismissed by the government, if you were to go to
20 trial and be convicted, certain of those counts carry a required
21 15-year mandatory minimum. Right?

22 THE DEFENDANT: Yes.

23 THE COURT: So, I mean, that's -- that's obvious from
24 the paperwork that's before me.

25 But I also note for the record and have carefully reviewed

1 the defendant's sentencing memorandum filed by Ms. Driggers. It
2 is Docket No. 62 in the file. And, Ms. Driggers, I will just
3 ask point-blank, the sentencing memorandum, if it is a Rule
4 11(c)(1)(C) plea that I accept, I sentence Mr. Smith in accord
5 with the plea agreement. I am unclear why I have a sentencing
6 memorandum before me.

7 MS. DRIGGERS: Should I answer that now, your Honor?

8 THE COURT: Certainly.

9 MS. DRIGGERS: Your Honor, up until this point,
10 Mr. Smith has remained silent. He has exercised that right.
11 This is his only opportunity in court to present his side of the
12 story. The presentence report has a duty to report all the
13 facts that are relevant to the offense of conviction and other
14 relevant conduct, and we believed that that presentence report
15 was lacking in several regards. So the sentencing memorandum
16 was simply to give the Court Mr. Smith's account of the offense
17 conduct section of that presentence report, what it should say,
18 because up until now, he has remained silent. He has a right to
19 tell the Court what his position is.

20 But as I mentioned in the plea agreement -- or in the
21 memorandum, he understands that this is not asking for a
22 variance or a departure, simply his side of the story.

23 THE COURT: All right. I appreciate that
24 clarification, and Mr. Smith has the right to do that. I
25 understand and appreciate that. I wanted to make certain that I

1 understood the context in which it was filed.

2 With that, as I have said, Mr. Smith, before I make the
3 decision on what to do with this plea, I want to make certain
4 that you recognize that the range of the offense and the
5 criminal history category set out in the presentence report and
6 the guideline range for imprisonment for the count to which you
7 indicate you want to plead guilty, according to the presentence
8 report, is 37 to 46 months. It would be a 15 and a criminal
9 history category -- that is if it's a 15 with a criminal history
10 category V, or 41 to 51 months if it's a 16, offense level 16
11 with a criminal history category V.

12 The 11(c)(1)(C) plea agreement proposes that I impose a
13 120-month sentence under the proposed plea. Right?

14 Ms. Driggers has explained to me the purpose of the
15 sentencing memorandum that was filed at Docket No. 62.

16 So with that, I will ask again, Mr. Smith, and I'm happy to
17 give you a recess to permit you time to think about it or for
18 you to visit with Ms. Driggers, but I will want to know on the
19 record from Mr. Smith that he wants to go forward with this
20 11(c)(1)(C) plea.

21 Do you wish to take a recess, Mr. Smith, or are you
22 prepared to answer that question?

23 THE DEFENDANT: Ma'am, I'm prepared to go forward.

24 THE COURT: All right. And by telling me that you're
25 prepared to go forward, the question that I asked is, are you

1 going forward with the intent that you're still asking the Court
2 to accept this proposed Rule 11(c)(1)(C) plea?

3 THE DEFENDANT: I don't know how to speak without
4 breaching the plea agreement. I've been scared to death this
5 whole time, your Honor. That's part of the reason I signed it
6 in the first place because I didn't want to go to trial and
7 receive 20 or 15 -- that was all I heard through the whole
8 proceedings. Okay. Well, you can get 15 or you can get 20. So
9 I signed the ten because I was scared of that. I've been scared
10 to death this whole time. Never threatened. I've never been
11 threatened or coerced, but I don't know what to call it. I've
12 been scared to death to go and get that kind of time if I take
13 my chances at trial.

14 I'm not trying to be stubborn or so -- I'm ready to go
15 forward to sentencing.

16 THE COURT: Why don't we take a short break. We'll
17 take a short break and let me review this material, and,
18 Ms. Driggers, I'll give you opportunity to visit with Mr. Smith
19 and then we'll come back out. But I'll stand out and take a
20 short recess for a few moments.

21 (Recess from 10:30 a.m. until 10:59 a.m.)

22 THE COURT: Ms. Driggers and Mr. Smith, please
23 approach.

24 MS. BRYANT: Your Honor, if I may before we start,
25 Ms. Driggers and I spoke during the break, and I know the Court

1 has made mention of the fact that there's a 15-year mandatory
2 minimum sentence in this case. I think it's important for the
3 record to reflect that while, yes, there's a 15-year mandatory
4 minimum, based on Mr. Smith's criminal history and the guideline
5 range, his guideline range if he was convicted on just one of
6 the trafficking counts, 262 months to 327 months, and that's
7 with acceptance. And if Mr. Smith went to trial, it would be
8 higher because the United States would not give him acceptance
9 points. So while we've been talking about a 180-month sentence,
10 it would technically be much higher than the 262-month sentence,
11 and that's something I spoke to Ms. Driggers about when we were
12 making our plea negotiations.

13 I also wanted for the Court to be aware, the Court had
14 asked Mr. Smith about Ms. Driggers's representation, and I want
15 the Court to know that Ms. Driggers has come to my office on
16 multiple occasions looking at discovery. She's been very
17 diligent with me, asking me lots of questions, and I think that
18 she's done a really good job, and I just wanted that on the
19 record.

20 THE COURT: All right. I appreciate that information
21 on the sentencing and the clarification with regard to that.

22 Ms. Driggers, is there anything that you wish to add?

23 MS. DRIGGERS: No, your Honor.

24 THE COURT: Ms. Driggers, are you and Mr. Smith
25 prepared to go forward?

1 THE DEFENDANT: Yes, ma'am.

2 MS. DRIGGERS: Yes, your Honor.

3 THE COURT: Ms. Bryant, is the government prepared to
4 go forward?

5 MS. BRYANT: Yes, we are, your Honor.

6 THE COURT: All right. With that, it's the finding of
7 the Court in the case of the United States v. Nathaniel Smith
8 that Mr. Smith is fully competent and capable of entering an
9 informed plea, that Mr. Smith is aware of the nature of the
10 charges and the consequences of the plea, and that the plea of
11 guilty is a knowing and voluntary plea, supported by an
12 independent basis in fact containing each of the essential
13 elements of the offense. That repeats what I said at the last
14 hearing when we were together. That's the point at which I
15 stopped.

16 The next point is for me to accept the plea, and before I
17 announce my decision or make my decision today, I want to go
18 through the objections to the presentence report because there
19 are several. I want to take up those. Let's go ahead and take
20 those up.

21 Ms. Driggers, have you and Mr. Smith had an opportunity to
22 review the presentence report?

23 MS. DRIGGERS: We have, your Honor, and with respect
24 to paragraph 10, just taking that out of order, we were provided
25 with a copy of the arrest report just before our hearing here

1 today. So we are prepared to withdraw the objection to
2 paragraph 10.

3 THE COURT: All right. Are there any other objections
4 on behalf of Mr. Smith to the presentence report?

5 MS. DRIGGERS: Mr. Smith did object to the reference
6 to him being in the gang. That is noted here, the identifying
7 data and in the paragraph 55. He understands that there was
8 testimony by Detective Todd Hurd at the bond hearing, but in
9 spite of that, Mr. Smith believes that -- you know, his position
10 is that he was not in that gang and that that reference should
11 be removed from his presentence report.

12 THE COURT: Ms. Bryant, does the government have a
13 response to that objection?

14 MS. BRYANT: Your Honor, like Ms. Driggers said, at
15 the bond hearing, Detective Hurd offered extensive testimony
16 about why he believed that Mr. Smith was a member of the gang,
17 and it's my fault, I realized this week that I needed to put
18 Detective Hurd on the stand, and when I attempted to reach him,
19 he is in the Dominican Republic on vacation. So I don't have
20 him here today. Ms. Driggers was kind enough to provide me with
21 a transcript of the bond hearing, and I think we would stipulate
22 that that would be his testimony here today as to why he
23 believes Mr. Smith was a member of the gang.

24 I don't have an objection to the presentence report saying
25 Mr. Smith denies being a member of the gang. Today I don't have

1 Mr. Hurd's testimony, but I could next week if that would be
2 important to the Court.

3 THE COURT: Ms. Driggers, what's the response on
4 behalf of Mr. Smith to what Ms. Bryant has represented?

5 MS. DRIGGERS: Well, your Honor, we would agree with
6 her that we would recommend that a sentence be included that
7 Mr. Smith denies being affiliated, but would note and maintain
8 our objection that it is overly prejudicial.

9 THE COURT: I'm not understanding what you want me to
10 do. Ms. Bryant has offered to include a sentence that says that
11 Mr. Smith denies the allegation, but I'm hearing you tell me
12 that doesn't satisfy the objection.

13 MS. DRIGGERS: Your Honor, we can withdraw that
14 objection with the clarification that a sentence be added.

15 THE COURT: All right. And a sentence that you
16 propose be added both in regard to, as I understand it, the
17 alternate ID identification and also paragraph 55 is that
18 Mr. Smith denies any gang affiliation.

19 MS. DRIGGERS: Yes, your Honor.

20 THE COURT: All right. Is that satisfactory to the
21 government as well, Ms. Bryant?

22 MS. BRYANT: Yes, your Honor.

23 THE COURT: All right. And that resolves that
24 objection. Correct, Ms. Driggers?

25 MS. DRIGGERS: Thank you, your Honor.

1 THE COURT: Are there any other objections by
2 Mr. Smith to the presentence report?

3 MS. DRIGGERS: Your Honor, we did note in the
4 sentencing memorandum that we believe the offense conduct
5 section should be supplemented. I understand that one of the
6 purposes of the offense conduct section is to include relevant
7 conduct and that the government has provided information to the
8 probation office that by a preponderance of evidence would
9 support the allegations. But we believe also that the
10 information in Mr. Smith's sentencing memorandum should be
11 included in that section as well, or if the sentencing
12 memorandum could be attached as an addendum to the presentence
13 report, we would be satisfied with that as well.

14 THE COURT: Ms. Bryant, what's the government's
15 response?

16 MS. BRYANT: Your Honor, I have no objection to it
17 being attached to the presentence report.

18 THE COURT: I'm going to look at our probation office
19 to see if that's an acceptable method. This, my understanding
20 is, will be transported to the Bureau of Prisons. Is that
21 something they would accept if the Court orders that?

22 PROBATION OFFICER: Yes, ma'am. If the Court orders
23 it be attached, they will accept it.

24 THE COURT: All right. With that, since that is what
25 Mr. Smith has requested, I do not hear the government objecting

1 and probation has informed me that that doesn't violate any
2 protocol in terms of how this is transported to the Bureau of
3 Prisons. I will direct that the sentencing memorandum be
4 attached to the presentence report as an addendum.

5 The sentencing memorandum is Docket No. 62 in this file.

6 Are there any other objections? First, Ms. Driggers,
7 before I get there, does that satisfy Mr. Smith's objection in
8 regard to the relevant conduct?

9 MS. DRIGGERS: Yes, your Honor. And we do not have
10 any more objections.

11 THE COURT: Ms. Bryant, any objections on behalf of
12 the government to the presentence report?

13 MS. BRYANT: No, your Honor.

14 THE COURT: Having resolved all the objections to the
15 presentence report, I'll adopt the presentence report as it's
16 been amended through my orders today as the findings of fact of
17 the Court.

18 With that, I've made the decision that I will accept
19 Mr. Smith's plea. Mr. Smith is now adjudged guilty of Count 6
20 of the superseding indictment.

21 Yes, ma'am?

22 PROBATION OFFICER: Your Honor, for clarification, if
23 the sentencing memorandum is filed under seal, I believe the
24 Court may have to remove that in order for us to attach it with
25 the presentence report.

1 THE COURT: My understanding was that it was not. It
2 is not filed under seal in this case.

3 PROBATION OFFICER: Okay. Thank you, your Honor.

4 THE COURT: Thank you for requesting clarification.

5 As I stated, in regard to the plea, the plea is therefore
6 accepted and Mr. Smith is now adjudged guilty on Count 6 of the
7 superseding indictment.

8 With that, since I have accepted the plea agreement, even
9 though the plea agreement stipulates to the sentence of
10 imprisonment that I am to impose, I am still required,
11 Mr. Smith, to go through and to establish the guideline range
12 and hear any objections and determine what guideline range your
13 sentence would be. So there are certain things that we will
14 still go through now in regard to that.

15 In regard to Count 6, Count 6 was transportation of an
16 individual with the intent to engage in prostitution. The base
17 offense level under the guidelines for that offense is 14.

18 Here there are four specific offense characteristic points
19 attributed. Subsection (a)(2) applies, and the offense involved
20 fraud or coercion; therefore, a four-level enhancement applies
21 under sentencing guideline 2G1.1(b)(1). As I said, it is a
22 four-level enhancement under specific offense characteristics.

23 There are no victim-related adjustments. There are no
24 adjustments for role in the offense. There are no adjustments
25 for obstruction of justice.

1 The adjusted offense level subtotal is an 18. There's a
2 two-level adjustment for acceptance of responsibility, as the
3 parties agree to in the plea agreement.

4 Does the government move to award a third point,
5 Ms. Bryant?

6 MS. BRYANT: Yes, your Honor.

7 THE COURT: The third point will be awarded.

8 There are no Chapter Four enhancements. So the total
9 offense level becomes a 15.

10 It was 14 at the base, plus four specific offense
11 characteristic points, brings it to an 18. Minus two for the
12 acceptance of responsibility. Minus the third point awarded by
13 the government on its motion. Brings us to an offense level of
14 15.

15 Criminal history convictions for Mr. Smith are set out on
16 pages 7 to 10 of the presentence report. They establish a
17 subtotal criminal history score of 12. That establishes a
18 criminal history category of V.

19 With an offense level 15, criminal history category of V,
20 we'll turn now to talk about the potential punishments. In
21 regard to imprisonment, the statutory provision, the maximum
22 term of imprisonment is ten years, under 18 U.S.C. 2421.

23 Under the guidelines, with the third point -- and if you'll
24 bear with me just a moment. Under the guidelines with the third
25 point, criminal history V, offense level 15, the guideline range

1 is 37 to 46 months.

2 In regard to supervised release, under the statute, the
3 Court shall impose a term of supervised release of five years to
4 life under 18 U.S.C. 3583(k).

5 Under the guidelines, since the statute requires a term of
6 supervised release of five years, the guideline requirement for
7 a term of supervised release also is five years to life.

8 For probation, under the statute, Mr. Smith is eligible for
9 probation for not less than one, nor more than five years
10 because the offense is a Class C felony, provided one of the
11 following is imposed as a condition of probation, unless
12 extraordinary circumstances exist: A fine, restitution, or
13 community service.

14 Under the guidelines, Mr. Smith is ineligible for probation
15 because the guideline range is in Zone D of the sentencing
16 table.

17 In regard to fines, under the statutory provision, the
18 maximum fine under the statute is \$250,000. Under the
19 guidelines, the fine range is 4,000 to \$40,000.

20 Restitution does not apply in this case.

21 There is a \$100 mandatory special assessment for each count
22 of conviction. Here Mr. Smith has pled guilty to one count.
23 The costs of prosecution may be imposed. Those are set out in
24 the presentence report. And the denial of federal benefits does
25 not apply.

1 Ms. Driggers, are there any objections on behalf of
2 Mr. Smith to my interpretation of the sentencing options?

3 MS. DRIGGERS: No, your Honor.

4 THE COURT: Ms. Bryant, any objection on behalf of the
5 government to my interpretation of the sentencing options?

6 MS. BRYANT: No, your Honor.

7 THE COURT: At this time, Ms. Driggers, I will ask --
8 Ms. Bryant, my understanding is there are no victims who wish to
9 make a statement; is that correct?

10 MS. BRYANT: That's correct, your Honor.

11 THE COURT: And, Ms. Driggers, I'll let you say what
12 you want to say on behalf of Mr. Smith. And then if Mr. Smith
13 wants to, he may address the Court as well.

14 You don't have to do so, Mr. Smith. It's up to you. I
15 won't hold it against you if you opt not to. It's 100 percent
16 up to you.

17 After you all have gone, then I'll allow Ms. Bryant to
18 close for the government.

19 Ms. Driggers?

20 MS. DRIGGERS: Thank you, your Honor. Based on the
21 information presented in our sentencing memorandum, the Court
22 probably understands that this was a difficult decision for
23 Mr. Smith to make with a guideline range of 37 to 46 months.
24 But I do want to make the point on the record that all plea
25 offers were conveyed to Mr. Smith, and this was the only one

1 that allowed him to plead to a crime which did not carry a
2 mandatory minimum of 15 years. So because of that, we have
3 struggled to make the right decision, but he did plead to a
4 statute that he was guilty of.

5 He does want to offer the Court some information about his
6 personal history and characteristics so that he is not forever
7 defined by the counts that were dismissed and the counts that
8 were in the offense conduct section.

9 THE COURT: You may proceed.

10 THE DEFENDANT: Your Honor, I'd just like to say I
11 just really want to give the Court an insight on the type of man
12 that I was raised to be. I can remember back when I was three
13 years old and my dad was at work there -- that's my family -- my
14 mom, she took me over my grandmother's house, and she told me to
15 go in and get some salt because all the stores had closed. And
16 I had just gotten through watching the Kung Fu Theater, and I
17 told my granddad when I got to the door, I said, "I'm going to
18 kick your butt."

19 He said, "I'm going to kick yours, too."

20 And then my grandma got me. And then when I got in the car
21 to drive home, with tears on me, got out of the car and my mom
22 got me. And when I got home, my dad got home from work, he got
23 me.

24 So I said that just to say I was raised by that proverbial
25 village to be a man. So today I want to be sentenced as a man

1 and not a pimp because that's what I'm not.

2 Thank you.

3 THE COURT: Ms. Bryant, does the government have
4 anything that it wishes to add?

5 MS. BRYANT: No, your Honor.

6 THE COURT: All right. With that, I'm going to pass
7 out a proposed set of conditions for supervised release, give
8 you all an opportunity to review those, and then I will address
9 those as well as addressing the sentence in this case, but I'll
10 take a short recess to permit you to review those.

11 Ms. Washington will hand those out.

12 MS. DRIGGERS: Thank you, your Honor.

13 (Recess from 11:16 a.m. until 11:26 a.m.)

14 THE COURT: Ms. Driggers and Mr. Smith, please
15 approach.

16 Before we took our most recent recess, I passed out to the
17 lawyers a set of proposed conditions. I've given you all an
18 opportunity to review them, and I'll hear any objections or
19 arguments, if there are any, to the proposed conditions. If
20 there are objections, I will rule on them, and then I will make
21 particularized findings as to the necessity for the conditions.

22 Ms. Driggers, have you and Mr. Smith had an opportunity to
23 review the proposed conditions?

24 MS. DRIGGERS: Yes, your Honor.

25 THE COURT: Do you have any objections to any of the

1 proposed conditions of supervised release?

2 MS. DRIGGERS: Yes, your Honor. First of all, thank
3 you for letting us see these in advance. Not all courts do that
4 and it's important, especially when there are lengthy conditions
5 that are proposed.

6 If we could start with paragraph two. Mr. Smith
7 acknowledges, as he did in his plea agreement, that he will have
8 to register with state agencies under these sex offender laws,
9 but we would propose removing the last -- well, I guess I'll
10 just read it. We have no objection with the language that says:
11 "The probation officer will provide state officials with all
12 information required under any sexual predator and sex offender
13 notification and registration statutes and may direct the
14 defendant to report to those agencies personally." But we would
15 request that the additional language be removed. We believe
16 that it is the state who decides what is required, and that may
17 be interview and assessment, it may be fingerprinting, that may
18 be polygraph, but that's up to the state to decide. And so we
19 would ask that that last part of the sentence be removed.

20 THE COURT: Ms. Bryant, what is the government's
21 response?

22 MS. BRYANT: Your Honor, I would look to Ms. Lawson
23 first to make sure that she agrees with that statement. I know
24 that once defendants are taken into -- I think once they are
25 sentenced, they are given an assessment. I don't know if it's

1 by the BOP or if it's by the state.

2 PROBATION OFFICER: It's I believe -- both will
3 probably do their separate assessments, and what that entails is
4 strictly up to those agencies as to what they require. This
5 language was probably drafted from the sex offender specialist's
6 knowledge, that they will do these assessments. And I believe
7 if the Court is inclined at just stopping the sentence at
8 "personally," that would suffice because I'm pretty sure that
9 the state is going to do their assessment.

10 MS. BRYANT: I have no objection to Ms. Driggers's
11 changes.

12 THE COURT: All right. With that, I'll grant the
13 objection and we will lift this condition. The proposed
14 condition will read: "The probation officer will provide state
15 officials with all information required under any sexual
16 predator and sex offender notification and registration statutes
17 and may direct the defendant to report to these agencies
18 personally."

19 MS. DRIGGERS: Thank you.

20 THE COURT: All right.

21 MS. DRIGGERS: With respect to paragraph three, the
22 defendant just objects to the requirement that he submit to sex
23 offender treatment.

24 THE COURT: Ms. Bryant? What's the government's
25 response?

1 MS. BRYANT: Your Honor, given the instant offense and
2 the relevant conduct listed in the presentence investigation, I
3 think the sex offender counseling is justified based on the
4 offense.

5 THE COURT: Ms. Lawson, does probation have anything
6 to add?

7 PROBATION OFFICER: Your Honor, I believe that
8 language is placed in there so that the probation office has the
9 ability to implement the polygraph testing requirement to aid in
10 the treatment and supervision. That may be separate and apart
11 from whatever treatment facility also performs those functions.
12 So we would still request that the language remain and also that
13 the probation office have the ability to determine if he can pay
14 the cost of the treatment, and the only way we can back that up
15 is to have that remaining language in there.

16 Also, refraining from alcohol usage is a part of treatment,
17 but also it aids with the supervision and testing requirement
18 that we would ask for.

19 THE COURT: All right. Ms. Driggers, do you have
20 anything else you wish to add?

21 MS. DRIGGERS: Well, your Honor, we would just note
22 that including this language gives the probation office a good
23 bit of power and decision-making authority that we believe is
24 properly vested with the Court. As Mr. Smith noted, if he
25 wanted to go and have wine with his family at a dinner, this

1 particular provision would keep him from doing that.

2 Also, as the probation officer mentioned, they would like
3 to be the one to make that determination, and our recommendation
4 would be that that be removed, and if there's ever any
5 inclination by the probation officer that Mr. Smith would
6 benefit from such treatment, we could always seek a
7 modification.

8 THE COURT: I will overrule the objection. I will
9 modify the proposed condition in this way: I will not modify
10 the proposed condition regarding participating in sex offender
11 treatment under the guidance and supervision of the probation
12 officer and abiding by the rules, requirements, and conditions
13 of the treatment program, including submitting to polygraph
14 testing to aid in treatment and the supervision process. I
15 won't modify that because the offense conduct and the relevant
16 conduct listed in the presentence report as well as the conduct
17 to which Mr. Smith pled guilty, it's my information that that
18 conduct, his prior conduct, both admitted conduct and the
19 conduct that's listed as relevant conduct in the presentence
20 report which the Court has adopted as its findings of fact in
21 the case, support that particular condition.

22 As I understand it, there's also an objection in regard to
23 the use of alcohol and the payment, the determination regarding
24 payment. Mr. Smith will be incarcerated for a period of ten
25 years. This condition will apply after Mr. Smith is no longer

1 incarcerated, and at that point, it is difficult for this Court
2 to assess in advance what his ability will be to pay the cost of
3 treatment. The Court will give probation the ability to
4 determine whether he is able to pay all or a part of the cost of
5 treatment based on his ability to pay, as determined by the
6 probation officer at that time.

7 In regard to the use of alcohol, Mr. Smith has a pretty
8 significant record in the presentence report in regard to
9 controlled substance offenses. Alcohol is demonstrated to
10 reduce folks' inhibition and judgment-making abilities.

11 What this Court will do is, the Court will modify that
12 language to state that Mr. Smith will abstain from the use of
13 alcohol throughout the course of treatment and submit to
14 testing.

15 MS. DRIGGERS: Okay, your Honor. Shall I proceed?

16 THE COURT: You may.

17 MS. DRIGGERS: We're going to need some help with
18 respect to paragraphs four, five, and six. If we could turn the
19 page, I believe that paragraph seven, the paragraph that begins:
20 Mr. Smith shall submit his person and any property, house,
21 residence, vehicle, papers, et cetera, basically to inspection
22 by the probation office upon reasonable suspicion, we believe
23 that that paragraph can pretty much be a catch-all for the
24 language in paragraphs four, five, and six.

25 I understand that this case started because of some

1 postings on Backpage or some sexual escort advertisements, but
2 the prohibition against not having a computer, not having media,
3 not using any kind of device, whether or not equipped with a
4 modem or access to the internet, is overly broad and vague. And
5 we would ask that the Court limit any kind of prohibition to
6 sexually suggestive material or sexually suggestive websites so
7 that he can continue to live a normal life when he gets out of
8 prison with something as innocuous as a cell phone. And, again,
9 because the probation office can at any time go in and inspect
10 his person, his property, or his computer as mandated by
11 statute, any danger that may be posed can be remedied when the
12 probation office inspects it.

13 THE COURT: Ms. Bryant?

14 MS. BRYANT: Your Honor, I would note that the
15 prohibition against owning the electronic devices, it's not a
16 complete prohibition; it's just without obtaining permission
17 from the probation office. So I don't think it's as
18 constricting. Ms. Driggers and I were talking, and I believe
19 paragraph seven encompasses a lot of things. I think maybe the
20 computer monitoring could be important until the probation
21 office maybe determines that it's no longer needed.

22 Like Ms. Driggers said, this offense involved Backpage,
23 where individuals were posting services, escort services, but
24 the problem is, Facebook, social media, all those sorts of
25 things, can be used to kind of further a trafficking offense,

1 further prostitution.

2 So that would be my response to Ms. Driggers's objection.
3 While I don't think that it's appropriate that it needs to be
4 there his entire term of supervised release, maybe it could
5 state as determined as necessary by the probation office. And
6 that gives them a little discretion to work with Mr. Smith about
7 the necessity to have that.

8 THE COURT: Ms. Lawson?

9 PROBATION OFFICER: Your Honor, I would also add that
10 the paragraph seven limits the ability of the probation office
11 to monitor only the items that are the defendant's person and
12 any property, house, or residence, papers, or computers. Those
13 other conditions would also govern possibly anything he would
14 have access to that's outside of his own personal property. And
15 one of the conditions, the one about he shall not own or use any
16 computer or device in the future, we can't predict what he will
17 have access to, depending on where he lives, where he works,
18 where he's going to school. So those other conditions I believe
19 were included to encompass things that we couldn't anticipate on
20 the front end but that he would be able to seek permission from
21 the probation office in order to get access if it was required
22 for his job or school purposes.

23 THE COURT: All right. Ms. Driggers, I'll give you
24 the last word on your objection.

25 MS. DRIGGERS: Your Honor, I mean, I appreciate the

1 probation office's response and the government's as well. I
2 just think at some point you're just going down a slippery
3 slope, and when you're preventing things that he possibly could
4 have access to, I just think that's just too much and it's vague
5 and overbroad. So we would just ask the Court to refine that a
6 little bit.

7 THE COURT: I overrule the objection. Paragraph seven
8 is a standard paragraph in regard to the search of his person
9 and property. Paragraphs four, five, and six refine the
10 probation office's ability in this particular case based upon
11 the conduct with which Mr. Smith was charged, the relevant
12 conduct that's set forth in the presentence information report
13 that the Court has adopted as its findings of fact in this case,
14 and in regard to the conduct to which Mr. Smith has pled guilty
15 in this case. It does involve the alleged use of the
16 Backpage.com in regard to the offenses, the one to which he pled
17 guilty in this particular case. So as a result of that, four,
18 five, and six in this Court's view are necessary to make certain
19 that the probation office has at its disposal the ability to
20 monitor Mr. Smith during the term of supervised release in
21 regard to conduct and activity in regard to that -- of that
22 nature, computer in particular since the computer was an issue
23 in this offense and the relevant conduct.

24 As it's noted, paragraph five, which is the paragraph that
25 says Mr. Smith shall not own or use a computer or device,

1 whether or not equipped with a modem or access to the internet
2 at any location without first receiving written permission from
3 the probation officer, it provides the probation officer with
4 the ability in communication with Mr. Smith at the time -- keep
5 in mind you all have agreed to propose to me a ten-year
6 sentence -- and we're talking about ten years in the future as
7 to technology and what will exist. It will permit the probation
8 officer at that time to confer and consult with Mr. Smith in
9 regard to these issues and particularly in regard to the
10 electronics that may be at issue at that time.

11 The same with paragraph six. Paragraph six permits the
12 installation of monitoring software and hardware as approved by
13 the probation office at that time and it's more specific than
14 paragraph seven.

15 As a result of that, I believe that paragraphs four, five,
16 six, and seven are warranted based upon a specific finding by
17 this Court of the conduct with which Mr. Smith has pled guilty
18 and the conduct that's listed in the presentence report. I
19 don't view them as overly broad. I don't view them as leaving
20 up to the probation office an unnecessary amount of discretion
21 given that this Court is sentencing with the understanding, as
22 the parties have proposed, that Mr. Smith will be incarcerated
23 for ten years before these conditions take effect.

24 Ms. Driggers, anything else?

25 MS. DRIGGERS: Yes, your Honor. To the next

1 paragraph. With respect to the condition that Mr. Smith
2 disclose business and personal financial information, we would
3 object to that based on the fact that his offense of conviction
4 was not a financial crime. He has no history of financial crime
5 or fraud with respect to businesses. And we just don't believe
6 that's reasonably related to the offense of conviction.

7 THE COURT: Ms. Bryant, the government's response?

8 MS. BRYANT: Your Honor, I thought that was a standard
9 condition that probation usually requires, I think in regards to
10 making sure that they're providing the best supervision. And
11 also, your Honor, several of these requirements provide that
12 Mr. Smith should pay all or part of the cost of treatment as
13 determined by the probation officer. I don't know how they can
14 do that without Mr. Smith disclosing his personal financial
15 information.

16 THE COURT: Ms. Lawson?

17 PROBATION OFFICER: Your Honor, Ms. Bryant is correct.
18 The probation office will only obtain information in order to
19 verify that the defendant can pay for the services that are
20 offered through the sex offender treatment as well as the
21 substance abuse treatment, and without having access to his
22 business and personal financial information, they can't assess
23 that.

24 THE COURT: All right. Ms. Driggers, I'll give you
25 the last word on your objection.

1 MS. DRIGGERS: Your Honor, I would just note that
2 every month people on supervised release come and fill out a
3 monthly report that has a summary of what their monthly income
4 is and that should be sufficient to make that determination
5 about whether he can provide -- or can pay for treatment. And
6 with regard to his personal business, I believe that that
7 information can be disclosed in that monthly report.

8 THE COURT: I don't see that monthly report is
9 inconsistent with this requirement as a special condition of
10 supervision. I'll also note that the financial condition is
11 needed to verify internet use and extracurricular activities of
12 this defendant while he's on supervised release to make certain
13 that internet use and extracurricular activities aren't contrary
14 to any treatment he's receiving as ordered by the Court. As a
15 result of that and because I believe this is a standard
16 condition for probation to be able to access that type of
17 information to assess Mr. Smith's ability to pay for the
18 treatment the Court is ordering as well to assess his compliance
19 with the other terms that the Court has ordered, I'll overrule
20 the objection.

21 Anything else, Ms. Driggers?

22 MS. DRIGGERS: Yes, your Honor. Let me make sure I've
23 got my paragraphs numbered correctly. That was paragraph eight.
24 Our objection next would be to paragraph ten. Yes. Paragraph
25 ten. We can take that up next.

1 THE COURT: All right. Paragraph ten being:

2 Mr. Smith will not associate with or have any contact with
3 convicted sex offenders unless in a therapeutic setting and
4 approved by the probation office?

5 MS. DRIGGERS: We would ask that language be added
6 "known" convicted sex offenders. He has to at least know that
7 they are convicted. He can't be responsible for knowing who
8 people are in advance. You see my point.

9 THE COURT: Ms. Bryant?

10 MS. BRYANT: I have no objection to that, your Honor.

11 THE COURT: Ms. Lawson?

12 PROBATION OFFICER: The probation office is fine with
13 that inclusion.

14 THE COURT: All right. That paragraph will then be
15 modified to read: Mr. Smith will not associate with or have any
16 contact with known convicted sex offenders unless in a
17 therapeutic setting and approved by the probation office.

18 MS. DRIGGERS: And our last objection would be to
19 paragraph 11, the prohibition against him having a P. O. box or
20 a separate storage unit. Again, I believe that the language in
21 paragraph seven would cover that as his personal effects.

22 THE COURT: Ms. Bryant?

23 MS. BRYANT: Your Honor, I may turn to Ms. Lawson to
24 maybe explain to me why probation usually likes to include that
25 provision.

1 PROBATION OFFICER: Your Honor, my understanding is
2 that if he opens a post office box or storage unit, there's no
3 prohibition against that; it's just with the approval of the
4 probation office. And it goes back to making sure that the
5 probation office has access to monitor his personal property,
6 papers, and any other business or financial dealings that he's
7 doing, and it's just another condition in place to make sure
8 that they can monitor his activity. And it doesn't preclude him
9 from having those things, just with the permission of the
10 probation office so the information can be reported to the
11 Court.

12 THE COURT: All right. Ms. Driggers, I'll give you
13 the last word on your objection.

14 MS. DRIGGERS: I'm all for supervision, your Honor,
15 but I just believe that that's a little too much and that the
16 language of the statute 3583(d) covers that. He still has some
17 constitutional rights when he leaves prison. One of them is to
18 open a P. O. box. If the probation office wants to know about
19 it, wants to inspect it, they will when they come to his house
20 and look at his personal property and when they talk to him
21 about it.

22 THE COURT: I overrule the objection. The condition
23 in my view doesn't prohibit him from having those things. It
24 requires him to seek probation's permission before opening one
25 of those things, a commercial mail receiving agency or a

1 commercial box or storage unit. As Ms. Driggers has pointed
2 out, paragraph seven, which is based on 18 U.S.C. 3583(d),
3 permits the probation office to monitor those things. This
4 requires Mr. Smith to seek probation's approval so probation is
5 aware of what he has in regard to personal effects, property,
6 house, residence, vehicle, papers, computer, and other items.
7 It doesn't prohibit him from having those globally or
8 permanently. Instead, it does it during the terms of
9 supervision while he's seeking treatment so probation can
10 approve it, can know in advance, monitor it, which they have the
11 ability to do under 18 U.S.C. 3583(d). I see this as a more
12 specific provision to ensure that probation is aware of these
13 items without having to go and seek them out from Mr. Smith.
14 It's a requirement of Mr. Smith to be aboveboard with the
15 probation office about what his activities are, much like the
16 financial disclosure.

17 Anything else, Ms. Driggers?

18 MS. DRIGGERS: Perhaps, your Honor, could we go back
19 to paragraph five, just so Mr. Smith is clear and we can get
20 this cleared up on the record in case there's some confusion
21 down the road. There is a prohibition against Mr. Smith using
22 or owning any computer or device at any location without first
23 receiving permission from the probation officer.

24 This one in particular is not -- it doesn't limit it to
25 just having pornographic material. It's just shall not own or

1 use any computer or device. So I want to make sure if Mr. Smith
2 is out in public or with his family and needs to borrow a cell
3 phone to make a phone call, does he have to get written
4 permission from the probation office? Or if there's an
5 emergency, does he have to get written permission? Can we have
6 some exception carved out there?

7 THE COURT: I think the exception is that he can seek
8 written permission from the probation officer in advance. So if
9 that's an exception that he feels he needs to have at the
10 beginning, that can certainly be set at this time. I'm not
11 prepared to know ten years from now how people will communicate.
12 I'm not sure I would have said ten years ago everyone will
13 communicate by text. This is an effort to provide that
14 flexibility and latitude, and he can certainly seek that
15 permission in advance from the probation office.

16 MS. DRIGGERS: Okay.

17 THE DEFENDANT: May I say something, your Honor?

18 THE COURT: Yes.

19 THE DEFENDANT: Wouldn't this be some kind of level as
20 to -- I mean, this makes me sound like a rapist or a child
21 molester or something. Would there be some kind of level I have
22 to register under? I mean, if I have to follow this on
23 supervised release, so be it, I'll do it. I'll follow that.
24 But would it be a level that -- you know, everything in here
25 makes me sound like a rapist or a child molester or a child

1 pornographer. That wasn't the case. I understand I have a sex-
2 trafficking charge. I understand that. But everything in here,
3 that's what it makes me sound like. So I'm going to have to
4 deal with this for the rest of my life. When I get out of
5 prison, I'll be 45 years old and it will be hard enough to get a
6 job anyway.

7 THE COURT: These are the conditions, Mr. Smith, that
8 the Court has proposed based on the offense to which you pled
9 guilty and based upon the relevant conduct that is listed in the
10 presentence report which the Court has adopted as its findings
11 of fact in the case. And based upon that conduct, these are the
12 conditions that the Court feels are appropriate to be imposed in
13 supervised release.

14 THE DEFENDANT: Okay. I understand that. Excuse me.
15 I understand that fact. But then the facts remain, would it be
16 some kind of level that I'm registering under instead of just
17 registering? You seen one, you seen them all?

18 THE COURT: That goes back to the first discussion.
19 That goes back to the first discussion in my determination,
20 which is, both the Bureau of Prisons and the state will likely
21 assess the offense level, the level under the registry. That's
22 the job that the state agency and the Federal Bureau of Prisons
23 will do. The Court's not doing that in any way here. So does
24 that answer your question? And I'll look to probation to make
25 certain if you feel anything else is necessary in the answer for

1 Mr. Smith that I am omitting?

2 PROBATION OFFICER: Yes. The assessment done by the
3 state officials and by the Bureau of Prisons, they do determine
4 certain tiers for sex offenders, depending on the charge and the
5 offense material that's enclosed in the presentence report. The
6 conditions that are implemented by the Court are simply for
7 supervision purposes once you're under supervised release.
8 Those conditions, after you have terminated from supervised
9 release, will be strictly up to the state tier system at that
10 point. After you're off of supervised release. But these
11 conditions will only be implemented by the probation office for
12 the term that you're under supervised release.

13 THE DEFENDANT: Okay. Say someone looks in the
14 computer. Won't they see exactly what it was instead of just
15 looking in there and see sex offender and classify me with
16 everybody else?

17 PROBATION OFFICER: That's what the state officials
18 will do. They have a tier system with different levels and they
19 will have access to that. I'm not sure how the state system
20 determines that based on the offenses, but I know that they do
21 have the tier system.

22 THE DEFENDANT: So there will be a little description
23 under there as to what I have to register for instead of just a
24 sex registry.

25 THE COURT: Mr. Smith, I don't know that the probation

1 office can tell you that today. What I am ordering you to do
2 is, based on the conduct that you have pled guilty, I'm ordering
3 you to register with the state. The state will make that
4 determination and it's the same as what I'm saying to you today
5 in regard to the conditions that I'm imposing on you. I believe
6 the conditions -- and I've made the determination and the
7 finding that these conditions are appropriate based upon the
8 offense and based upon the findings of fact that I have adopted
9 from the presentence report.

10 The state has its own system under the sex offender
11 registry. I'm not prepared to answer your questions about that
12 today. That's up to the state. What I'm prepared to do is
13 based upon your offense, I require you to report to them. So I
14 understand you have specific questions about what their
15 reporting system will be and what they'll classify you as.
16 That's up to the state.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Anything further, Ms. Driggers?

19 MS. DRIGGERS: No, your Honor.

20 THE COURT: Do you want to take a moment to confer
21 with Mr. Smith to make certain he doesn't have anything further?

22 MS. DRIGGERS: No, your Honor.

23 THE COURT: All right. Ms. Bryant, anything further
24 on behalf of the government?

25 MS. BRYANT: No, your Honor.

1 THE COURT: All right. With that, Ms. Driggers, do
2 you know of any reason why the Court should not impose sentence
3 at this time?

4 MS. DRIGGERS: No, your Honor.

5 THE COURT: The Court's carefully considered all of
6 the factors as stated in 18 U.S.C. 3553(a), has considered the
7 sentencing guidelines as advisory, pursuant to *United States v.*
8 *Booker* and Eighth Circuit precedent, and has considered the
9 statements of the attorneys for the government and for Mr. Smith
10 and has also carefully considered the nature of the offense.

11 The Court has considered and reviewed all of those factors
12 in this case before I determined that the plea agreement was an
13 appropriate plea agreement. For those reasons, I've accepted
14 the plea agreement.

15 Therefore, Mr. Smith is remanded to the custody of the
16 Federal Bureau of Prisons for 120 months. The Court recommends
17 that Mr. Smith participate in nonresidential substance abuse
18 treatment, mental health counseling, and educational and
19 vocational programs during incarceration.

20 Upon his release from imprisonment, Mr. Smith shall be on
21 supervised release for a term of five years. Mr. Smith must
22 report to the probation office and the district to which he is
23 released within 72 hours of release from the custody of the
24 Bureau of Prisons, and he must comply with all mandatory and
25 standard conditions that apply.

1 The following special conditions are imposed during the
2 term of supervised release: Mr. Smith shall participate under
3 the guidance and supervision of the probation office in a
4 substance abuse treatment program, which may include testing,
5 outpatient counseling, and residential treatment. Further,
6 Mr. Smith shall abstain from the use of alcohol throughout the
7 course of treatment.

8 The probation officer will provide state officials with all
9 information required under any sexual predator and sex offender
10 notification and registration statutes and may direct Mr. Smith
11 to report to these agencies personally. Mr. Smith shall
12 participate in sex offender treatment under the guidance and
13 supervision of the probation officer and abide by the rules,
14 requirements, and conditions of the treatment program, including
15 submitting to polygraph testing, to aid in treatment and the
16 supervision process.

17 Mr. Smith is required to pay all or a part of the cost of
18 treatment, based on his ability to pay as determined by the
19 probation office.

20 Further, Mr. Smith will abstain from the use of alcohol
21 throughout the course of treatment and submit to testing.

22 Mr. Smith shall not purchase, possess, subscribe, view,
23 listen to, or use any media forms containing pornographic images
24 or sexually oriented materials, including but not limited to
25 written, audio, visual depictions, such as pornographic books,

1 magazines, literature, videos, CDs, DVDs, digital media, or
2 photographs. This includes materials containing sexually
3 explicit conduct as defined in 18 U.S.C. 2256(2).

4 Mr. Smith shall not own or use any computer or device,
5 whether or not or equipped with a modem or access to the
6 internet, at any location without first receiving written
7 permission from the probation officer. This includes access
8 through any internet service provider; bulletin board system;
9 gaming system, device or console, online social networking
10 activities; any public or private computer network system; cell
11 phone; or any other remote device capable of internet
12 connection.

13 Mr. Smith shall agree to the installation of computer
14 monitoring software and hardware approved by the probation
15 office and shall contribute to the computer monitoring cost
16 based on the ability to pay as determined by the probation
17 office. Mr. Smith shall abide by all rules and requirements of
18 the program and shall consent to unannounced examinations of all
19 computer equipment, internal and external storage devices, which
20 may include retrieval and copying of all data from the computers
21 and any internal and external peripherals and/or removal of such
22 equipment for the purpose of conducting a more thorough
23 inspection by the probation officer or probation service
24 representative.

25 Mr. Smith shall submit his person and any property, house,

1 residence, vehicle, papers, computer, or other electronic
2 communication or data storage devices or media and effects to a
3 search at any time, with or without a warrant, by any law
4 enforcement or probation officer with reasonable suspicion
5 concerning a violation of a condition of probation or unlawful
6 conduct by the person and by any probation officer in the lawful
7 discharge of the officer's supervision functions pursuant to 18
8 U.S.C. 3583(d).

9 Mr. Smith shall disclose business and personal financial
10 information upon the request of the U. S. Probation Office.

11 Mr. Smith will not directly or indirectly contact the
12 victims by any means, including in person, by mail,
13 electronically, telephonically, or via third parties. Further,
14 Mr. Smith will remain at least 100 yards from the victims at all
15 times. If any contact occurs, Mr. Smith will immediately leave
16 the area of contact and report the contact to the probation
17 office.

18 Mr. Smith will not associate with or have any contact with
19 known convicted sex offenders unless in a therapeutic setting
20 and approved by the probation office.

21 Mr. Smith will not own, use, or have access to the services
22 of any commercial mail receiving agency, nor will Mr. Smith open
23 or maintain a post office box or storage unit, unless approved
24 by the U. S. Probation Office.

25 Mr. Smith shall cooperate in the collection of DNA as

1 directed by the probation office.

2 Mr. Smith shall not possess a firearm, ammunition,
3 destructive device, or any other dangerous weapon.

4 No fine is imposed as Mr. Smith is not able and is not
5 likely to become able to pay all or part of a fine, even with
6 the use of a reasonable installment schedule.

7 A \$100 special penalty assessment is mandatory in this
8 case.

9 This nonguidelines sentence is imposed as the parties
10 stipulated to jointly recommending a 120-month sentence, which
11 was within the statutory maximum for the offense to which
12 Mr. Smith pled guilty.

13 Further, his statutory exposure and guideline range
14 calculations would have been significantly higher absent the
15 plea agreement.

16 Mr. Smith has a prior felony conviction and extensive
17 criminal history, some of which was not included in his criminal
18 history score due to the age of the convictions with state
19 authorities.

20 He has a history of illegal substance abuse and mental
21 health issues, which have only been controlled through the use
22 of medication.

23 This sentence is imposed to reflect the seriousness of the
24 offense, to promote respect for the law, and to address the
25 needs of the offender, Mr. Smith.

1 The Court has discussed on the record in responding to the
2 objections raised by Mr. Smith the reason and justifications for
3 this specific and special conditions of supervised release that
4 have been imposed and the Court adopts in this sentence the
5 justifications and the reasons given in ruling on those specific
6 objections as the basis for the Court's imposition of those
7 conditions now.

8 Ms. Driggers, are there any objections to the form of the
9 sentence on behalf of Mr. Smith?

10 MS. DRIGGERS: No, your Honor.

11 THE COURT: Ms. Bryant? On behalf of the government?

12 MS. BRYANT: No, your Honor.

13 THE COURT: Mr. Smith, is there anything about this
14 sentence that you feel violates an agreement or understanding
15 that you had with anyone?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: With that, Mr. Smith, you can appeal your
18 conviction if you believe your guilty plea was somehow unlawful
19 or involuntary or if there's some other fundamental defect in
20 the proceedings that was not waived by your guilty plea. You
21 also have a statutory right to appeal your sentence under
22 certain circumstances, particularly if you think the sentence is
23 contrary to the law.

24 However, you may have waived those rights as a part of your
25 plea agreement, and you entered into an plea agreement here

1 which waives some or all of your rights to appeal the sentence
2 itself.

3 Such waivers are generally enforceable, but if you believe
4 the waiver is unenforceable or not valid, you can present that
5 theory to the appellate court. With few exceptions, any notice
6 of appeal must be filed within 14 days of judgment and
7 conviction being entered in your case. And that most likely
8 will be either later this afternoon or tomorrow, Mr. Smith.

9 If you don't file a notice of appeal within 14 days, you
10 almost always lose your right to appeal. If you can't afford a
11 lawyer, you can apply to appeal in forma pauperis or as a poor
12 person and ask for the appointment of a free lawyer.

13 If you ask, if you decide that you want to appeal, the
14 Clerk of the Court will prepare and file a notice of appeal on
15 your behalf.

16 Is there anything else that we need to take care of today,
17 Ms. Driggers?

18 MS. DRIGGERS: Your Honor, would the Court recommend
19 that the Bureau of Prisons designate a facility for Mr. Smith
20 that is as close to Central Arkansas as possible to facilitate
21 family visitation?

22 THE COURT: I will do that. Mr. Smith, I will put
23 that recommendation in my judgment and commitment in this case.
24 The Bureau of Prisons doesn't have to listen to what I
25 recommend. They will make a decision about where to house you

1 based upon their needs and their determinations. But I will
2 certainly recommend to them that you be housed in a facility
3 closest to Central Arkansas.

4 Anything else, Ms. Driggers?

5 MS. DRIGGERS: No, your Honor.

6 THE COURT: Ms. Bryant?

7 MS. BRYANT: No, your Honor.

8 THE COURT: All right. With that, we are adjourned.

9 (Proceedings adjourned at 12:04 p.m.)

10 REPORTER'S CERTIFICATE

11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled matter.

13 Date: September 8, 2015

14 /s/ Christa R. Jacimore, RDR, CRR, CCR
15 United States Court Reporter
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Christa R. Jacimore, RDR, CRR, CCR
United States Court Reporter